

**Recommendations Regarding
EPA Activities to
Promote Environmental Justice in the
Permit Application Process**

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**A Report of Recommendations
of the
National Environmental Justice Advisory Council**
A Federal Advisory Committee to the U.S. Environmental Protection Agency

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DISCLAIMER

This report of recommendations has been written as part of the activities of the NEJAC, a federal advisory committee providing independent advice and recommendations on the issue of environmental justice to the Administrator and other officials of the EPA. In addition, the materials, opinions, findings, recommendations, and conclusions expressed herein, and in any study or other source referenced herein, should not be construed as adopted or endorsed by any organization with which any Work Group member is affiliated.

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NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL (NEJAC)

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INTRODUCTION

When it comes to environmental permitting, there is a fundamental connection between three primary interests: 1) the permit applicant or permitted facility; 2) the host community; and 3) the regulatory entity responsible for the permit's issuance and compliance. It's like a three legged stool; all three legs have to be equally sized and strong for the stool to work as intended. The legs can look different, be made of different materials, but they have to work as a unit or the stool won't stand, or at least not for long. This three-way relationship lies at the heart of this report's considerations. Regardless of municipal, business, or regulatory lead (whether federal, tribes, states, or others), these three elements are closely tied to the subject of this report and the draft plan regarding EPA Activities to Promote Environmental Justice in the Permit Application Process (Plan).¹

This report focuses on the regulatory entity -- in this case, the U.S. Environmental Protection Agency (EPA). Although there are multiple references to host communities and the permit applicants and permitted facilities, the target audience for this report's recommendations is the EPA and its regional offices.

EPA's Plan has three primary sections: I - General Information; II - Actions EPA Can Take; and III - Draft Best Practices for Permit Applicants. While the entire Plan's content is the basis for this report, actions EPA can take (section II) is the focus. It is also important to recognize that subjects can quickly become entangled and complicated when advising EPA about how, in turn, it should advise both a permit applicant and a host community about EPA's permitting processes. That dynamic is also a complicated and key consideration in this report.

BACKGROUND

NEJAC initially addressed how to incorporate environmental justice into permitting in 1996, when the NEJAC Enforcement Subcommittee forwarded to the Council the *Draft Memorandum on Incorporating Environmental Justice into EPA Permitting Authority* (July 18, 1996)². The memorandum, prepared by Richard J. Lazarus, Georgetown University Law Center and a member of the subcommittee, summarized environmental justice legal authorities under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Safe Drinking Water Act and Federal Insecticide, Fungicide and Rodenticide Act. In that memorandum, Lazarus argued that EPA had extensive authority to incorporate environmental justice into its permitting programs by modifying or denying permits or registrations in response to evaluation of matters of environmental justice concerns. The memorandum noted that the proposals contained within were an "opening salvo" for EPA to engage with NEJAC about how this might be explored.

By 2000, NEJAC forwarded to the EPA Administrator recommendations that grew out of extensive discussions among the NEJAC, members of the NEJAC Permitting Recommendations Work Group, and a wide range of stakeholders exploring how environmental justice could be incorporated into the permitting process. That NEJAC report, *Environmental Justice in the Permitting Process: A Report from the Public Meeting on Environmental Permitting Convened by the National Environmental Justice Advisory Council*,

¹ (Activities to Promote Environmental Justice in the Permit Application Process, Docket ID No. EPA-HQ-OAR-2012-0452; Federal Register Listing-9680-6, June 26, 2012)

² <http://www.epa.gov/compliance/ej/resources/publications/nejac/integrating-ej-into-permitting.pdf>.

Arlington, Virginia (August 3, 2000),³ featured 80 policy proposals offered by representatives of stakeholder groups, which were organized into five consensus recommendations:

1. The Office of General Counsel should clarify legal authority on addressing environmental justice in permitting;
2. The Administrator should assert leadership in further understanding cumulative impacts, degree of risk, community demographics, and disproportionality of risk, and how these can be integrated into the permit review process;
3. Public participation requirements should ensure that permit writers consult with affected communities prior to permit consideration or issuance;
4. Federal environmental laws must be fairly and equitably enforced among all communities; and
5. EPA should provide guidance for state, regional, local and tribal government on the environmental justice implications of permitting and siting decisions and on the impact of local zoning ordinances.

FINDINGS and RECOMMENDATIONS

The Essential Problem: EPA has missed opportunities to consider communities' environmental needs in its development of a range of environmental policy decisions, including permitting. IEPA has an obligation to carry out regulatory policy development processes that are inclusive of all stakeholder views, including the concerns of some geographically and demographically defined communities, particularly minority and low-income communities. "Overburdened" is the term used throughout Plan EJ 2014 to generally describe the communities of particular concern in this regard. Moreover, although EPA has worked in the last few years to develop effective outreach to include these communities, its efforts have yielded uneven results across its regions.

□ **Recommendation 1: EPA needs to systematically ensure that communities' concerns are appropriately considered during its permitting process.** To address this process deficiency described above, EPA must:

- Identify potential community concerns related to a permit application;
- Ensure convening of representative and productive stakeholder discussions to address and resolve community concerns related to permit applications;
- Design procedures that optimize community engagement in the permit process;
- Ensure that community members have the resources necessary to be informed participants;
- Appropriately manage stakeholder expectations about EPA's authority to act related to the permit and other ancillary community concerns;
- Develop community engagement Best Practices for EPA which are easily implemented and replicable throughout EPA and its regional offices.

Assessing Success. What does success look like? How will it be measured? When considering what success looks like for this EPA Plan, the Council offers a number of findings that, collectively, are intended to provide a positive vision and a pragmatic list of measures for assessing success. That vision sets the tone for this report and the Council's advice. Each general issue addresses key components and recommendations to ensure that intended outcomes are planned, observed, and measured when appropriate. These findings are about planning ahead as well as for after-the-fact assessment -- this is why the report starts with them. These points should be considered early in a permitting process to help ensure they are realized. The following provides clear examples of goals and successes the Council supports. It is

³ <http://www.epa.gov/compliance/ej/resources/publications/nejac/permit-recom-report-0700.pdf>

not prioritized and it is not intended to be all-inclusive; other ways to achieve success may be possible. For example, at the outset of an EPA permitting process, these findings should be carefully reviewed and enhanced as needed by stakeholders to ensure mutually understood necessary components are included from the beginning. As envisioned by this Council, when the permitting process is completed, success will be evident when EPA and/or its respective EPA Regional staff have:

- Advised the impacted community's key leaders and organizations about the pending permit application;
- Developed a backup plan to identify and consider potential community impacts related to the permit in the event the community cannot or will not engage the permit process;
- Engaged local land use planners and economic development officials as stakeholders;
- Identified the impacted community's likely concerns, and engaged the permit applicant to consider these concerns early in its design and budget process;
- Facilitated capacity building of community members to enable their informed and effective engagement in the permit process;
- Managed community expectations related to the permit process by clearly communicating to community members the limits and duties of the Agency's permitting authority;
- Offered advice to the permit applicant about ways to avoid, mitigate, or remediate adverse impacts of the proposed facility's operations on the host community;
- Helped the community and permit applicant agree about technical modifications to facility design, or operation protocols, and/or processes in response to community concerns about adverse impacts;
- Affirmed that the process was acceptable to both the permit applicant and community members;
- Affirmed that the process resulted in a permit that protected community members' health and environment;
- Managed a permitting process that resulted in a cost effective outcome for the permit applicant;
- Realized a collaborative, collegial process;
- Produced an outcome acceptable to stakeholders;
- Become better educated in EJ enhanced permitting processes, thus making better permitting decisions as a result of quality community engagement;
- Been able to show that communities do believe they have a say in their environment's health;
- Demonstrated through capacity building and effective engagement that communities are better informed about the roles and expectations of the EPA regarding both permit issuance and permit compliance.
- Demonstrates that all communities received timely, direct, and accurate information from the EPA and the applicant, about the permit's process and progress, instead of hearing indirectly.

□ **Recommendation 2: EPA should prepare an implementation strategy - which includes, at a minimum, these findings, in relation to specific permitting plans.** The strategy should openly and comprehensively consider these findings on an on-going basis. EPA is further advised to act on the results from such assessments of these goals. While many of these points are not easy to measure, the Council believes the goals are sufficiently compelling to pursue. The Council recognizes that although the goals and objectives should be standardized and replicable across EPA and its regions, the methods by which to achieve them will vary by permit type, location, and many other factors.

These points should be considered and addressed by EPA's national senior management. This includes not only Assistant Administrators and other EPA Headquarters staff in charge of programs with permitting responsibility, but also every EPA Regional Administrator, and the regional management teams. Regional as well as Headquarters staff involved with permitting should be

made responsible for implementing these points. As much as possible, results should be openly posted and discussed, including publically. It should be an iterative process.

Of equal importance, these points should be assessed by the respective communities, permit applicants, and other entities involved with EPA's permitting processes. There will be a greater chance for success if other stakeholders are assessing as well. If EPA openly asks questions of all stakeholders to help assess these points, the collective response and appropriate follow-up should enhance EPA's success. EPA should strive for continuous progress for each community's early engagement and for each applicant's early understanding of the community's economic and environmental factors that are affected (or perceived to be affected) by the permitting process.

EPA's Activities: Nice to do, Required, Site dependent, or What? EPA's Plan talks about what EPA *can* do to foster environmental justice in the permit application process. It has identified "... actions that EPA regional offices *can* take when issuing EPA permits to promote greater participation in the permitting process by communities..." (*emphasis added*)⁴. This is a good start, but it leaves unanswered a lot of questions about commitments, details, and expectations.

The Plan is an EPA tool in development. Side-stepping the Plan's content for a moment, the Plan is EPA's internal guidance focusing on its own regional offices. It is not a rule, nor a directive from the Administrator. It is a well-intentioned plan that sets a positive tone, but it is not a guarantee. Rather, it provokes questions about where, when, and how the Plan is to be carried out. It raises questions about possible extra obligations upon permit applicants and host communities, regardless of resources. And it doesn't settle questions about which communities are the focus of this Plan.

Having noted such questions, this report acknowledges that for now, EPA is proposing internal guidelines only. Rule changes are not addressed in the Plan, whether applicable to EPA itself, or other authorized environmental permitting entities such as States or Tribes, or permit applicants. This report also acknowledges that without rules, this Plan is limited. Thus, expectations of success are limited.

Success *is* envisioned as noted above. But the commitment and details are pending. EPA is advised to actively engage on the related issues noted below. Some issues should be addressed collectively in an open conversation with communities and applicants. But at this point, all of these topics are dependent upon the discretion and self-imposed commitment of EPA's leadership, both nationally and regionally. The following points, questions and recommendations are offered to help EPA strengthen this Plan for success, recognizing the Plan is still draft and of limited stature.

A. How will EPA ensure the Plan will be carried out consistently across all EPA regions and within all EPA permitting programs? Referenced regional implementation plans are critical to this Plan, but they're not yet done. This is a major missing element to the Plan at the time of this assessment. EPA's regions will be doing the bulk of the implementation of this plan. Consistency and accountability across all 10 EPA regions and the entire landscape of the nation's trusts, states, territories, villages, islands, and districts will be critical to the Plan's success.

Recommendation 3: EPA implementation plans must be consistent across all 10 regions.
Assuring such consistency nationally will require a substantial commitment by EPA leadership to implement consistently across all regions.

B. Every EPA region needs to be a leader in this effort.

⁴ Ibid, , Summary, page 1

- Recommendation 4: EPA regional leadership needs to fully embrace and empower this approach.** EPA must hold subordinates accountable to carry it out as a service to both the applicant and the involved community. The effort needs to be sustained and a fundamental part of helping to issue and enforce permits. A time-limited ‘campaign’ will not be good enough. EPA, including the regions, needs to make an on-going and growing commitment to this approach. More on the matter of regional implementation plans is addressed within the *State and Tribal Roles Related to EPA Permitting* section of this report.
- C. Some applicants will likely ignore the best practices for permit applicants. How will that situation be acknowledged and addressed by the EPA regions?
- D. The Plan’s directive and its implementation need to be stronger. Some states require that an environmental permit application first be reviewed for completeness by the state permitting agency. The application must include specific outreach plans to the host community. These rules ensure communities are provided what they need to know early enough to be able to engage with the process effectively *before* the facility’s key design and/or operation decisions are locked down. For example, in Connecticut, this review process takes up to 60 days before any action can be taken on the permit. It helps ensure the community has time to learn, ask questions, and help mitigate permit related plans for mutually better plans and actions to be formalized within the permit. A flow chart for CT’s permitting process ensuring early community notification and engagement is in Appendix A.
- Recommendation 5: EPA needs to establish very clear procedures and commitments to be sure the Plan delivers as intended.** EPA is advised to seriously review existing permitting rules at the state level on how they ensure early community engagement in the process, and consider developing a similar federal rule within a year of the Plan’s implementation at the regional level or reasonably soon thereafter.
- E. What is EPA’s plan to better align existing permit-related rules with this plan? Without relatively consistent and clear rules to support this plan, at least eventually after it has been tested and refined, consistent implementation is not likely. This is a concern to all three key players: the host communities, the permit applicants, and the authorized/delegated state and tribal regulatory agencies that will inevitably be held to a similar standard as the one EPA applies to itself. This should be of concern to EPA leadership as well. Permit applicants deserve to know that their competitors are being held to the same standards (and related expenses, processes, obligations, plans, etc) as they are. Without such assurances, odds for success are compromised.
- Recommendation 7: EPA should take steps to align existing permit-related rules with the plan.**
- F. Where is there assurance for long-term implementation/commitment? Permitted activities and the pollution that comes with them may outlast the EPA leadership that granted them. Businesses and communities need the predictability of fair and stable permitting rules that allow truly sustainable coexistence.
- Recommendation 8: EPA needs to develop clear steps to ensure this plan is integrated into the Agency’s programs -- it needs to be “institutionalized” to succeed.**
- G. Is the Plan to be carried out everywhere or selectively applied? . The Plan says *overburdened* communities are the focus of the Plan. It defines such communities as those “...that *potentially*

experience disproportionate environmental harms and risks as a result of cumulative impacts or greater vulnerability to environmental hazards.” It goes on to say, “EPA believes it is especially important to make *special efforts* to provide enhanced participation opportunities to overburdened communities, particularly minority, low-income, and indigenous communities” (Emphasis added).⁵ Unfortunately, the determination is not answered by one measure or one combination of measures and there are many other NEJAC and EPA reports and efforts on this topic, such as references to EPA’s EJSeat and the EJScreening tools, among others

Recommendation 9: EPA needs to clarify how it will identify “overburdened” communities where “special efforts” are needed. The clarification needs to align with the Civil Rights Act, Executive Order 12898 on Environmental Justice, and respecting other more stringent state/tribal constraints.

H. When addressing those ‘special efforts’ that EPA *can* do, questions quickly arise as to whether such special efforts are specific to EPA only or applicable to the permit applicant as well. This should be clarified with appropriate guidance.

Recommendation 10: EPA should provide guidance to permit applicants as to what the applicant should do to support full community engagement in review procedures

I. Who defines what is best? While there are many “best practices” to list and learn from, ‘best’ is a subjective notion. It is dependent, in part, on who pays, who’s accountable, and the primary benefactor of the best practice.

Recommendation 11. EPA should exercise sensitivity when labeling a practice with the distinction of a “best practice.” A best practice may not be considered the ‘best’ by all parties involved with a permit’s application.

J. Is the Plan applicable to all permits? Is it scalable? Per EPA’s Plan, ‘overburdened’ communities are prime targets for the Plan. However, even in overburdened communities, regardless of designation process, relatively minor permits may not be in need of such special efforts. Examples could include permits that are:

- insignificant renewals – nothing new proposed and no local concerns raised;
- new, but with low or no adverse environmental health impacts from releases;
- modifications that will reduce emissions and/or discharges;
- enhancing community safety;
- expansions that will not increase pollution or other community stressors;
- temporary and/or short in duration;
- formally recognized emergencies and related public health protections.

Recommendation 12: EPA should test and implement the Plan based on the type and level of the permit. In general, if special efforts can’t be carried out for all permits, due to limited resources or other constraints, EPA should focus on major permit actions and permits where significant adverse effects are possible. This would be relevant to larger volumes of pollution, relatively higher toxic releases, or relatively high risks to the community (taking into account the community’s overall environmental burdens). In these cases, special efforts should be based on, at least:

⁵ Ibid, Section 1, page 5.

- Permitted activities that will clearly impact the air, water, and or land;
- Publicly reviewable methods for assessing cumulative and disproportionate impacts from all pollution sources in the host community;
- Publicly reviewable methods for assessing ‘overburdened communities’;
- Whenever there is a reasonable belief by the host community that an adverse impact will result from the permit’s issuance, whether or not the impact is considered ‘disproportionate.’

K. How does EPA’s Plan accommodate deficiencies in community engagement? Both the NEJAC and EPA have put forth strategies for engaging affected communities in decisions that impact their environment and health. For example, NEJAC recommendations for enhanced community engagement include the 2013 Model Guidelines for Public Participation: An Update to the 1996 NEJAC Model Plan for Public Participation, as well as the 1996 Environmental Justice, Urban Revitalization, and Brownfields: the Search for Authentic Hope, among other reports. The EPA OSWER Community Engagement Initiative (CEI) is designed to enhance OSWER and regional offices’ engagement with local communities and stakeholders to help them meaningfully participate in government decisions on land cleanup, emergency preparedness and response, and the management of hazardous substances and waste.

EPA’S PUBLIC ENGAGEMENT ON PERMITTING: The Proof is in the Process. EPA’s efforts in developing guidance for considering environmental justice communities in the permitting process underscores the challenges EPA faces in effectively engaging communities of concern. EPA’s efforts are in response to community members’ and organizations’ comments of frustration. History has shown in many cases that these same parties do not learn about EPA permitting activities until it is too late for the host community to have influence on shaping the permit process and outcomes.

Regarding this Plan, nationwide, only 27 comments were received. Most comments came from the business sector. This is a concern to the Council. This implies that stakeholders from local communities were not meaningfully engaged in the public process that was available for comment for this EPA Plan.

This may be also indicative of a larger problem that EPA faces with regard to meaningfully engaging the public in federal policy making. Communities are more inclined to focus on site-specific issues. It is unknown why a broad range of stakeholders from communities did not engage during the public process to review this Plan. With the premise that there was a lack of awareness about the public comment availability, recommendations for soliciting feedback from a range of stakeholders in communities follow so the EPA can have a wider cross-section of feedback from the public. The lack of meaningful engagement of communities in this process may also be indicative of a lack of capacity to engage issues that are not immediate and local.

- Recommendation 13: EPA needs to educate community members and organization leaders on the effect of EPA policy on local decisions, and help community members develop the capacity to engage the federal environmental policy effort.** This is critical if EPA wants to engage locally focused community members on overarching environmental policy development.

Engaged Participants Lead to Embraced Outcomes. The benefits of early and sustained public participation for all stakeholders are significant. Early public involvement will assist both the applicant and permitting staff in drafting a better permit. Early public engagement will better identify other matters of importance to the community that may or may not be related to the permit.

- Recommendation 14: EPA should focus guidance recommendations about how to collaborate with communities on ways to avoid, mitigate, or remediate potential adverse impacts on the**

community from applicant operations, for those concerns within the applicant's control and EPA's authority to regulate. Outreach to communities early in the application process to identify and address permit applicant impacts could help avoid unfeasible project costs, unsustainable operational costs, lost investment costs, or a long and costly formal adjudicatory process because questions and concerns can be considered before project budget and design decided and construction schedules are final.

Past permitting experience shows that if meaningful community engagement does not happen, the chances for permit issuance complications and surprises, including opposition, delays, and added costs to the applicant, are almost certain to increase. The Council believes that if EPA ignores these permit-related actions, permit applicants and their host communities will be under-served at the very least, if not suffer greater consequences.

- **Recommendation 15: EPA should encourage the public to provide formal comments on a permit proposal.** This should be triggered whenever EPA publishes permit-related notices in the Federal Register which pertain to issues that may be of value or interest to communities. Upon receipt of a permit application, EPA regions should use the contacts they have developed through their regional implementation plans to advise community members of the permit-related activities. This should include the process that EPA will support to ensure the public can have meaningful engagement. In addition, EPA should continue to advance electronic-based communication. This includes social media, web-based resources and expanded distribution lists. However, this should not be at the expense of more traditional methods of notice to the public. Whether rural or urban, most communities have public places where notices are posted. As low-tech as it may be, EPA regional offices need to post easy-to-understand notices at local parks, community centers, senior centers, libraries, town halls, or other public places with bulletin boards or similar types of posting places. Local and regional public service radio announcements should be included.

Project Timing / Progression – when is the good time to get the initial word to the community? For permit activities that may have a significant impact on communities. EPA's regional offices have staff that are engaged with EPA grantees. Current examples of these grant programs include the Community Action for a Renewed Environment (CARE) program and the Environmental Justice Small Grants (EJSG) program. These employees work closely with the regulatory offices within their regions and can have access to those incremental networks of grantees within communities, academia, or tribes. Those in-house relationships between EPA regional programs and EPA grantees are ever-present resources that need to be cultivated and harvested. That network of community information represents another EPA opportunity to reach out regarding public comment periods. This needs to become part of the EPA workforce culture and job-performance expectation. More recommendations on the subject of public outreach and engagement are addressed within this report's "State and Tribal Roles Related to EPA Permitting" section.

- **RECOMMENDATION 16: EPA regions should take the initiative to schedule public meetings with the community to enhance their knowledge of the proposed activity.** Such meetings should occur on or shortly after the formal application has been received by EPA, no later. Upon receipt of a permit application, the respective EPA region should automatically use its extended contact lists to advise community members of the application. This should include the process that EPA will support to ensure the public can have meaningful engagement.

In addition, EPA regional offices should ensure ongoing contact with any existing networks or coalitions of environmental justice community groups. Individual community groups may have originally formed for site-specific reasons, but may have joined with others as part of a local, state, or regional coalition or network. Such coalitions may be more likely to comment on larger, national policy issues than individual or more isolated community groups, and can also get the word out or

give encouragement to their member organizations. (The North Carolina Environmental Justice Network is an example). EPA's regional offices have staff who are engaged with EPA grantees. Current examples of these grant programs include the Community Action for a Renewed Environment (CARE) program and the Environmental Justice Small Grants (EJSG) program. These employees work closely with the regulatory offices within their regions and can have access to those incremental networks of grantees within communities, academia, or tribes. Those in-house relationships between EPA regional programs and EPA grantees are ever-present resources that need to be cultivated and harvested. That network of community information represents another EPA opportunity to reach out regarding public comment periods. This needs to become part of the EPA workforce culture and job-performance expectation.

Cumulative Impacts – how is that to be assessed? This is a key question, but not the subject of this report. There are numerous efforts within EPA and elsewhere to address this important challenge. The NEJAC has also addressed this subject in other reports, in particular its 2004 Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts.

Roles for Academic Institutions

There are several ways in which EPA Regions can involve universities, colleges, community colleges and technical schools in assisting with potentially controversial or complex permit decisions, usually at a relatively low cost, or even for free through internships for credit, research projects and short term consultations:

1. Process. Many universities have significant expertise in public engagement, consensus solutions to complex problems and dispute resolution. For example, the University Network for Collaborative Governance includes about 30 university centers and programs that provide collaborative governance teaching, service and research. Some of these are associated with law schools, but many are in different parts of the university. Services range from public deliberation to community problem solving to multi-party conflict resolution. College presidents or respected faculty members can be very useful as conveners of processes. <http://www.policyconsensus.org/uncg/index.html>
2. Scientific and technical advice. Academic institutions have varying degrees of capacity to provide neutral facts and analysis that can help businesses and communities find common ground on which to base specific actions that may avoid or resolve potential or existing issues. There may be ongoing research projects that could inform the permit process. Most universities and many other institutions have a mission of engagement and service to the regions in which they are located

- Recommendation 17: EPA should incorporate as a “best practices” consultation with academic institutions in the area affected by a potential permit action to identify whether they can be of assistance in the process or technical areas.** Many academic institutions maintain strong commitments to community service including standing institutional arrangements for community outreach on issues of concern. In some cases, these arrangements involve well-developed relations with community organizations and leaders. While the engagement of a neutral facilitator is often useful, as recommended in the Plan's draft best practices, it is advisable that a preliminary assessment of the need for and the issues to be addressed by the professional facilitator should be done by the facilitator or by someone else preceding the engagement of the facilitator. In some cases, university centers may be able to undertake that preliminary assessment at relatively low cost. Also, the preliminary assessment may be all that is needed to reveal the solutions needed to allow the permit process to move forward.

Where a more formal process is determined to be necessary, but a full scale dispute resolution is not indicated or affordable, a university president or respected professor or staff may serve as a neutral convener to bring all the parties to the table to seek solutions to one or more issues. Elected officials and active or retired business, academic, government or non-profit leaders may also successfully convene these processes. As another resource, many law schools have dispute resolution/mediation programs, including clinical programs where they provide dispute resolution services to the public; most or all are free.

- **Recommendation 18: EPA regions should identify potential points of contact in academic institutions and should encourage permit applicants to include those contacts in their early outreach efforts.** The net should be cast broadly because different points of contacts might serve best in different institutions, for example., a university community outreach office, any of a number of academic departments (environmental or other science, social science, government, history), a student volunteer service organization, or a law school clinic. University public health departments also may be good resources for scientific and technical advice

HOW ARE “OVERBURDENED” COMMUNITIES IDENTIFIED AND BY WHOM?

In response to this question, there are tools that exist within EPA to identify environmental justice and/or “overburdened” communities, which typically are of highest concern due to the cumulative impacts to the environment resulting in potential negative human health impacts. For example, Environmental Justice Strategic Enforcement Tool (EJSEAT), National Environmental Policy Act (NEPA) Assist, Community-Focused Exposure and Risk Screening Tool (CFERST), and environmental justice legal tools are all available to the EPA.

To illustrate, NEJAC’s report on *Nationally Consistent Environmental Justice Screening Approaches* provided advice pertaining to the tools EPA must provide to identify EJ communities. A different Council work group was asked to recommend how EPA could improve methods for identifying communities with EJ concerns. As a result of that work, the NEJAC addressed the important role demographics play in identifying the highest priority communities:

“Within EJSEAT, percent minority is one of six indicators in the Social Demographic category that comprises one-fourth of the overall EJSEAT scores. The NEJAC has frequently observed over the years that the legacy of racial and ethnic discrimination has real impacts in terms of communities’ health and welfare, as well as their vulnerability to environmental stressors.”⁶

“Thus, percent minority is a reliable indicator whose weight should not be diluted by including less important or indeed in some cases erroneous, variables within the overall EJSEAT score.”⁷

As an example of statutory provisions and guidance on how EJ communities have been successfully identified during public process, below is an examination of NEPA as is consistent with Professor Lazarus’ recommendations regarding “NEPA’s strict procedural requirements...very much products of such innovative and expansive interpretations of existing statutory language.”⁸

⁶ NEJAC (National Environmental Justice Advisory Council), 2010, *Nationally Consistent Environmental Justice Screening Approaches*, May. Available at <http://www.epa.gov/compliance/ej/resources/publications/nejac/ej-screening-approaches-rpt-2010.pdf>, page 13

⁷ Ibid

⁸ Ibid, page 12.

“Each federal agency should analyze the environmental effects, including human health, economic, and social effects of Federal actions, including effects on minority populations, low-income populations, and Indian tribes.”⁹

“Despite the EJ goal to not hold to strict quantitative analysis, Agencies should recognize that the question of whether the agency action raises environmental justice issues is highly sensitive to the history or circumstances of a particular community or population, the particular type of environmental or human health impact, and the nature of the proposed action itself. There is not a standard formula for how environmental justice issues should be identified or addressed.”¹⁰

“Low-income populations in an affected area should be identified with the annual statistical poverty thresholds from the Bureau of Census’ Current Population Reports, Series P-60 in Income and Poverty. In identifying low-income populations, agencies may consider as a community either a group of individuals living in geographic proximity to one another, or a set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions or environmental exposure or effect.”¹¹

“Minority populations should be identified where either: (a) the minority populations of the affected area exceeds 50 percent; or (b) the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis.”¹²

“Agencies should consider relevant public health data and industry data concerning the potential for multiple or cumulative exposure to human health or environmental hazards in the affected population and historical patterns of exposure to environmental hazards, to the extent such information is reasonably available. Agencies should consider these multiple, or cumulative effects, even if certain effects are not within the control or subject to the discretion of the agency proposing the action.”¹³

“When the agency has identified a disproportionately high and adverse human health or environmental effect on low-income populations, minority populations, or Indian tribes from either the proposed action or alternatives, the distribution as well as the magnitude of the disproportionate impacts in these communities should factor in determining the environmentally preferable alternative. In weighing this factor, the agency should consider the views it has received from the affected communities, and the magnitude of environmental impacts associated with alternatives that have a less disproportionate and adverse effect on low-income populations, minority populations, or Indian tribes.”¹⁴

- **Recommendation 19: EPA should utilize tools such as EJSEAT, NEPA Assist, CFERST, and EJ Legal Tools should be utilized by EPA to help identify environmental justice communities.** The Council has provided prior recommendations about how to identify nationally consistent environmental justice screening approaches should be incorporated into the recommendations to the EPA for help identifying EJ communities. Demographic data such as Census data and American Community Survey data also can be used to help identify overburdened communities. This comes with the caveats that:

⁹ CEQ (Council on Environmental Quality), 1997, *Environmental Justice: Guidance under the National Environmental Policy Act*, Executive Office of the President, Dec. Available at <http://ceq.hss.doe.gov/nepa/regs/ej/justice.pdf>, page 2

¹⁰ Ibid., page 8

¹¹ Ibid, page 25

¹² Ibid, page 26

¹³ Ibid, page 9

¹⁴ Ibid, page 15

- The most localized data available is utilized. Census block groups are better than Census tracts, for example;
- The analysis is not a strict quantitative analysis, but rather a starting point to be ground-truthed and verified against other related data;
- Keep in mind that beginning with the 2010 Census, its data does not consider some ethnic minorities as race, such as Hispanics.

STATE AND TRIBAL ROLES RELATED TO EPA PERMITTING

The Plan lacks clarity and distinctions regarding roles between EPA national leadership, EPA regional offices, and host states and tribes. As stated at the outset, this report focuses on EPA's permits. However, the Council must acknowledge the anticipation that this Plan triggers for the tribes and states. Tribal and state partnerships are critical on this matter.

It is expected that states will need to follow this EPA lead for the majority of environmental permits issued in the U.S. The sooner EPA establishes the guidance, tools, and executive-level support and expectation that this will happen, the sooner states will be able to observe, learn, support, coordinate, follow, and enhance this approach. The Plan sets a path that states and tribes are likely going to be expected to follow.

- **Recommendation 20: EPA should clarify specific roles for states and tribes relative to EPA's permitting procedures Plan**, as a recognized first step to expansion. Another suggestion is that the regional implementation plans should reflect coordination and input from the respective states and tribes in the region. Some states have chosen, others are only able to, invest minor resources in environmental justice, both in general and in respect to issues affecting permit issuance. By reaching out to all states and tribes in the development of the regional implementation plans, EPA's regions can engage those which have given, or can only give lower priority to environmental justice concerns. EPA can encourage them to use some of the best practices wherever possible.

Further, states and tribes with more robust programs can assist EPA regions in showing what has worked and what has not worked. This will assure that communities, which often don't distinguish between federal, state and local authority and programs, will not be confronted with inconsistent, conflicting or unworkable approaches to community engagement.

State and local governments appreciate the fundamental reasons for EPA to support and enhance environmental justice through permitting. In the broad context, EPA needs to embrace and carry out an on-going commitment to support environmental justice considerations in relation to its permitting duties. There will always be a need for EPA to provide this service. Applicants will also need guidance relative to environmental justice and local cumulative impact awareness.

If EPA truly wants to see environmental justice incorporated into its permitting process, EPA has to be seen as a guide and efficient facilitator when and where needed to businesses and private sector leaders in understanding and properly acquiring permits in an environmental justice-sustainable manner.

- **Recommendation 21: EPA should conduct public meetings in most, if not all, permitting proceedings affecting EJ communities.** EPA should do as much as reasonably possible to encourage permit applicants to plan for and carry out informal community outreach meetings to explain their permit-related intentions. It is equally important for the applicant to provide transparency during the permitting process. There is no better way to encourage such applicant outreach other than an incentive program. The States of Connecticut, Pennsylvania, Illinois and New York have early public participation policies and practices related to permitting. The EPA,

learning from these models, should create a simple process that facilitates communication between permit applicants and local stakeholders. The EPA may consider extending this early public participation to all communities and tribal nations across the country.

Ideally, the meetings should be co-sponsored by the applicant and local community, with support by the EPA region. This provides an opportunity for the applicant and the community to select a convenient time and location of meeting and to discuss anticipated concerns/questions with the project. In many cases, concerns can be addressed and responded to at the community informational meeting. The applicant should have an idea of what the community concerns are before the informational public meeting by contacting local community leaders in advance. If co-sponsorship for such a meeting is not an option, it should be an EPA meeting or one sponsored by one of the other stakeholders;

The meetings should be informal, informative, and allow for questions and discussion. An open house-like meeting is recommended. At the meeting, process and regulatory expectations should be made clear, preferably by the EPA. If appropriate, use a third party in a neutral position to facilitate the meetings, especially if there is a history of tension between members of the community and the applicant.

Although cleaning up prior pollution is not typically the subject of the permit application meeting, it still may be highly relevant to the affected community.

- **Recommendation 22: EPA, in collaboration with the permit applicant, should actively listen to and learn from the community about past pollution, rather than avoid the subject by insisting past pollution is out of the new permit's scope.** EPA can then better help delineate what the permit *is* addressing and what it will not. Further, EPA is advised to anticipate past/existing pollution locally and be prepared to bring in related experts (including staff from EPA regional programs not directly involved in the permit application) to address prior pollution and/or clean-up activities in the area. If the permit related facility has had a poor compliance history, it is important and necessary for the community to hear what changes will be taking place to ensure compliance with the new permit under consideration. This is very important if the facility is planning on expanding or changing operations. Both before and after the public meeting, EPA should help the applicant understand existing environmental conditions and work with the applicant to ensure that the permitted activity will not exacerbate local public and environmental health risks.

Depending on the extent and nature of the existing pollution, EPA (as well as the applicant) may provide a better (and more responsive) public service by conducting separate meetings with the community to address those issues distinctly apart from the permit application. Preferably, costs for the informal meetings (not-required by law) should be paid by the applicant. The applicant is triggering the potential change and likely has the most to gain by the effort. EPA, the applicant, and the community should work together to keep these meeting costs reasonable and clear. EPA can help defray costs, e.g., use of information networks, public meeting rooms, use of established local networks, publications, providing the applicant clear examples of similar efforts, logistics, lessons-learned and successes elsewhere. In addition, many communities favor having the meetings in their local public places such as schools, town halls, and churches or other religious institutions, which may have little or no costs for use. The applicant may host meetings at the facility also offering a tour of the operations if appropriate.

- **Recommendation 23: In preparation for these meetings, EPA's regional environmental justice and data/mapping staff should provide relevant existing information on all local area**

and communities, including known environmental justice communities and/or tribal nations that may be impacted by the permitted activities. EPA regions should assemble and share information about compliance related to existing locally-related environmental permits and activities. This should include related local data on environmental monitoring. In a similar manner, the applicant should prepare their materials and have displays and a presentation outlining the project and projected phases.

Decisions on meeting locations, timing, and notification process should be mutually planned and carried out in an agreed-to and well-publicized timeline. The goal is to reach all potentially impacted parties/stakeholders in a reasonable advanced time frame to allow for quality engagement by all. The “best practice” is a mutually supportive cooperation between the applicant and the regional office on this element of the permit’s development.

A standard guidance document that is simple to implement will help the applicant and the EPA’s environmental justice staff, communication staff, and permitting staff better respond to the community’s existing pollution-related facts, impressions, misunderstandings, visions, concerns, resources, etc. As an example, the states of Illinois and Connecticut have specific dedicated staff that perform outreach and review public participation plans drafted by the permit applicant to ensure that meaningful dialogue occurs and the public understands the proposed project.

- **Recommendation 24: EPA should provide examples of outreach tools to applicants in a guidance document.** EPA also should ensure that guidance can accommodate variations in local community capacity, priorities, and issue intensity. Tools successfully used in some states include posting of signs in high foot traffic areas, the production and distribution of fact sheets regarding proposed activity, and press releases, etc. It is important that the information be provided early in the application process before the final design and construction phase is completed. For example, such a guidance document for applicants could include a checklist of information that may be important to the community, such as any potential existing environmental conditions, list of permits, and remediation that may occur as part of the permit application. Likewise, to the extent known, EPA regions should help applicants understand the makeup of a community’s environmental challenges, residents, organizations, business leaders, and local environmental regulatory entities.
- **Recommendation 25: EPA should conduct on-going outreach to industry and associations.** EPA nationally, and in the regions, needs to commit to on-going outreach to industry associations, councils, sectors, etc. on the importance of understanding EJ in relation to permitting and environmental justice. This is in recognition that EPA’s regions cannot educate the business sector on these permitting issues alone; along with states, business have a role here too.
- **Recommendation 26: EPA should ensure all stakeholders are well informed as early as possible in the permitting process.** Detailed information regarding the following should be provided:
 - Explain the project in a linguistically appropriate manner. If needed, host multiple meetings to allow more groups to learn about the permit and related details;
 - Permit application process, including outreach procedures/tools;
 - Nature and scope of the permit;
 - If addressing an existing permitted facility, provide information on its compliance history relative to its past permit(s). Include information on measures taken to mitigate past bad practices through the current or past permits;

- Timing of the process, including requirements and expectations.
- Names and contact information as to who within EPA's region is responsible for the permitting process.
- Include names and titles of who is doing what in an official capacity related to the permit and how to contact them for more information. This could include state, tribal and/or local entities counterparts to EPA that have a linked role.
- Public opportunities to engage through informal public meetings. This needs to occur early before technical review is completed by EPA permitting staff so that environmental concerns, (i.e., pollution reductions) may be incorporated in the permit.
- Where and how to learn more about technical-related information about the industry. There may be a role here for local or state colleges and/or universities to assist in this effort.

□ **Recommendation 27: EPA should actively communicate with all potentially impacted parties throughout the process.** Early engagement alone is not enough. Throughout the permitting process, EPA regions need to work with the broader communities around the permitted activities. Within a reasonable proximity, those communities include: states, tribes and regional and local governments (including public health, zoning/community planning officials, and local elected officials); local business; community organizations; local school officials, and service organizations. State, local, tribal – environmental justice counterparts should be brought into the planning effort as soon as possible – even before publication of the legal notice. This is to help ensure all of the appropriate parties (as collectively identified) are notified early and at the same time. This process may require the Agency to conduct more outreach to local media, including radio and local newspapers.

□ **Recommendation 28: EPA should be prepared to do what's appropriate beyond what the law requires.** There are no new requirements proposed. Thus, if the applicant chooses to do only the minimum for required permit notifications, the EPA region should have established clear and detailed internal EPA policy on what EPA's regions will do to support environmental justice in their permitting work.

- Have this policy carried out consistently in all regions. Hold senior management accountable: within the Regional Administrator's Office; within the regional EPA program issuing the permit; and within EPA's HQ Office of Environmental Justice, who would oversee the development, results and refinements of this policy.
- Entice processing speed. Advise that optional additional participation by the applicant will help the effort. At the onset, advise that if the applicant isn't willing to help out and do more than the minimum, EPA will have to balance limited permit processing resources. Likely, a region's processing speed for a unilateral outreach effort will be slowed if the applicant isn't willing or able to help. This should not be at the expense of public engagement opportunities.
- Translate where needed. Ensure that communication and outreach efforts provide for the translation of crucial public documents into the appropriate language(s) for the affected community; and make available language translation services at public meetings and hearings. The information should be made available to multicultural and tribal and/or Indian Country media news.
- Overtly and clearly advertise permit hearings and related public meetings. Contact all potential interested stakeholders and not rely on the legal notification process. Related costs should be paid by the applicant for public outreach, including translation, solicitation and response to community questions and input. Like the private sector, EPA has to make choices of where to spend limited resources. EPA should use its extensive networking resources to all-the-more

ensure that all potentially impacted stakeholders have the most advanced notification of the hearings possible.

- Ensure a thorough National Environmental Policy Act (NEPA) review to consider and assess related impacts, including possible exacerbation of cumulative impacts and viable alternatives.
- Thoroughly review the compliance history of the applicant's other environmental-related permitted operations, nationwide, if any. Federal worker safety and health (OSHA) and/or related state equivalent compliance history, may be appropriate to review as well.

Looking ahead, realizing it is the States and the Tribes who will be implementing permitting actions is not the prime subject of this Plan or this report, EPA is advised to address the fact that states and tribes will be the primary permitters.

- **Recommendation 29: EPA should provide inducements and/or incentives to states to adopt any program which enhances the ability of communities to be involved with permit actions in their communities.** As such, EPA should be proactive to ensure that States and Tribes with delegated authorities are issued adequate and timely guidance to manage the permitting program and consideration of environmental justice. The multi agency/tribal relationships, roles and complexities will be challenging and time consuming. In essence, how will expectations be managed for state-issued permits? One suggestion is that EPA needs to acknowledge this effort with States via the respective EPA/State Environmental Performance Partnerships Agreements.

APPENDIX A

Prior NEJAC Reports Focused on Incorporating Environmental Justice into Permitting

NEJAC initially addressed how to incorporate environmental justice into permitting in 1996. That was when the Chair of the NEJAC Enforcement subcommittee forwarded to the Council a draft memorandum prepared by subcommittee member Professor Richard Lazarus, Georgetown University Law School. The memorandum summarized environmental justice legal authorities under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Safe Drinking Water Act and Federal Insecticide, Fungicide and Rodenticide Act. In the *NEJAC Draft Memorandum on Incorporating Environmental Justice into EPA Permitting Authority* (July 18, 1994) Lazarus argued that EPA had extensive authority to incorporate environmental justice into its permitting programs by modifying or denying permits or registrations in response to evaluation of matters of environmental justice concern. The report was described as an “opening salvo” for EPA to engage with NEJAC about how this might be explored.

By 2000, NEJAC forwarded to the EPA Administrator an extensive report on discussions among NEJAC Work Group members about how environmental justice could be incorporated into the permitting process. This NEJAC report, *Environmental Justice in the Permitting Process: A Report from the Public Meeting on Environmental Permitting Convened by the National Environmental Justice Advisory Council, Arlington, Virginia* (August 3, 2000), included 80 policy proposals offered by representatives of stakeholder groups, which were organized into five consensus recommendations:

1. The Office of General Counsel should clarify legal authority on addressing environmental justice in permitting;
2. The Administrator should assert leadership in further understanding cumulative impacts, degree of risk, community demographics, and disproportionality of risk, and how these can be integrated into the permit review process;
3. Public participation requirements should ensure that permit writers consult with affected communities prior to permit consideration or issuance;
4. Federal environmental laws must be fairly and equitably enforced among all communities; and
5. EPA should provide guidance for state, regional, local and tribal government on the environmental justice implications of permitting and siting decisions and on the impact of local zoning ordinances.

The draft permitting report was discussed at a public meeting, where representatives from the private sector made several recommendations about how incorporate environmental justice into the permitting process:

- Use the NEJAC guidelines on public participation as a tool to shape engagement practices
- Commit to listen, record and respond to questions asked of the permit applicant at public meetings; and
- Corporations should evaluate their internal policies on facility siting and acquisition with a goal that awareness of environmental issues and community perspectives become part of the decision-making framework.

In 2004, NEJAC produced a report addressing how to evaluate cumulative risks in the context of environmental programs (responding to recommendation 2 above), *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* (December 2004). This report was notable in its exploration of information available to characterize the vulnerability of a community and the opportunities in EPA programs to identify and provide solutions for the communities with the highest potential for environmental justice concern. This seminal report was a foundation of

EPA's Communities for a Renewed Environment (CARE) program, as well as the inspiration for further work by the agency to develop data bases and tools to objectively document cumulative risk and impact.

In 2006, NEJAC issued a letter report on *Future Mechanisms to Enhance Stakeholder Involvement* which addressed ways in which the business community could be engaged to help reduce disproportionate cumulative impacts. NEJAC recommended that EPA educate business and industry on the ways they can "go beyond compliance and better meet the needs of the communities in which they operate." The Council noted that "responsible business and industry respond to and are educated by forms of recognition that are nearly cost-free for EPA" – citing Performance Track and Energy Star. EPA was urged to find ways to encourage business to "exercise good citizenship and leadership by going beyond compliance to hear, understand and respond to concerns raised by communities with actions that address those concerns and improve quality of life." This included specifically requesting that EPA issue "good practice" guidance to business on collaboration with communities. See pp. 9-10. The Council also advised EPA to use its regulatory discretion in the permitting context:

"[T]o facilitate implementation of solutions reached through collaborative community and business efforts that go beyond compliance. For example, in some situations facility-wide permits may provide flexibility that makes it easier for business to implement the specific technologies and methods that communities request to reduce risk. Likewise, prompt government action to issue or modify permits as required to achieve collaborative goals would assist both communities and business." See p. 11.

The first term of the current NEJAC Work Group on EJ in Permitting cited this on-going theme of cumulative risk -- and the 2000 NEJAC report specifically -- in its recommendations on how EPA should approach environmental justice in permitting. The NEJAC reminded EPA that the cumulative risk approaches the Council has recommended over the years feature four essential elements:

1. Thorough characterization of risks and vulnerabilities,
2. Setting priorities,
3. Maintaining a bias for action to alleviate cumulative impacts in communities with the highest potential for environmental justice concern, and
4. Reflecting a sense of proportionality when seeking solutions in the context of permitting. See NEJAC, *Enhancing Environmental Justice in EPA Permitting Programs* (April 2011), pp. 6-10,

Of particular note, the Work Group echoed the early NEJAC focus on:

- Emphasizing permits and opportunities for environmental improvement in communities with the highest potential environmental justice concerns, rather than a particular kind of permit;
- Encouraging understanding of cumulative risks and stressors for the community within the permit process, but also recognizing that in a community with multiple sources of environmental concern and vulnerability, the permit applicant is responsible only for its proportional share of the total impact; and
- The regulatory agency's critical role in fostering a holistic response to improving environmental conditions in communities with highest cumulative risks. EPA will not be effective if the applicant for a particular permit is viewed as the "tipping point" whose permit is held hostage to a broadly-shared environmental condition. The permit applicant can be expected to contribute its fair share toward environmental improvement in high-priority communities with environmental justice concerns, but all sources of concern must contribute to solutions. EPA's most effective role is to foster area-wide solutions.

The NEJAC report on Nationally Consistent Environmental Justice Screening Approaches (May 2010), provided further advice. This report addressed the tools EPA must provide to identify the communities of

highest concern. These tools (including, but not limited to “EJSEAT”) are important resources and thereby become the focus of cumulative risk reduction and collaborative efforts to improve quality of life. This Work Group was asked to recommend how EPA could improve its methodologies for identifying communities with the highest potential for environmental justice concern. Within that report, NEJAC addressed the critical role demographics play in identifying the highest priority communities:

“Within EJSEAT, percent minority is one of six indicators in the Social Demographic category that comprises one-fourth of the overall EJSEAT scores. The NEJAC has frequently observed over the years that the legacy of racial and ethnic discrimination has real impacts in terms of communities’ health and welfare, as well as their vulnerability to environmental stressors. . . . Thus, [percent minority] is a reliable indicator whose weight should not be diluted by including less important or indeed in some cases erroneous, variables within the overall EJSEAT score.” (p. 13).

In summary, previous NEJAC recommendations pertinent to EPA’s current guidance document counsel that:

- Early and on-going outreach and responsiveness to the community in the permitting context is necessary;
- Screening tools make it possible to identify the communities with the highest potential for environmental justice concerns, and race is a critical factor in prioritizing communities for attention and environmental improvement;
- NEJAC has supported expanded public outreach and permitting practices that focus on finding and improving environmental conditions in communities with the highest environmental justice concerns; and
- The permit applicant’s response in communities with the highest potential for environmental justice concern must be to go beyond compliance to assure environmental protection and to be held to fair-share accountability for environmental progress.

Seen in this context, it is notable that EPA’s current guidance:

- Strongly encourages early and on-going outreach in the permitting context;
- Provides good practical advice on how to accomplish this; and
- Will need to be coupled with other tools -- including EPA’s enforcement authority, its access to relevant grant and other resource programs to address communities with environmental challenges, and its ability to work with local and state government to incentivize community-specific health and environmental improvements.

Applicability:

In NEJAC’s previous guidance specific to the charge regarding how environmental justice should be incorporated into EPA’s permitting programs, the Council has been very clear:

“Environmental justice concerns arise in a geographic area, not just within the bounds of a particular permit, and EPA should focus on locating and improving places with high cumulative risks and impacts rather than rely on a permit-by-permit approach. There are tools available to screen for locations of high environmental justice concern.” NEJAC, *Enhancing Environmental Justice in EPA Permitting Programs* (April 2011), pp. 8-9.

In making this recommendation, NEJAC cited previous work of the Council (including extensive reference to reports also cited in this Work Group update), as well as the real concern that if EPA were to proceed on a permit-category by permit-category approach, it might develop different standards under different programs, thus creating discrepancies in what “passes” the environmental justice test for one permit versus another in the same location.